

Barry R. Fischer (BF0274)
FISCHER & MANDELL LLP
550 Fifth Avenue, 6th Floor
New York, New York 10036
(212) 840-9300

Attorneys for Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STANTON STERLING SCHULTZ
Plaintiff,

vs.

SAFRA NATIONAL BANK OF NEW YORK,
and BANCO SAFRA, S.A.
Defendants.

DECLARATION OF BARRY R. FISCHER

I, Barry R. Fischer, declare under penalty of perjury of the laws of the United States, as follows:

1. I am an attorney duly admitted to practice law before the courts of the State of New York and the United States District Court for the Southern District of New York. I am a member of the firm of Fischer & Mandell LLP, counsel for defendants Safra National Bank of New York and Banco Safra, S.A.
2. I submit this declaration in support of defendants' opposition to plaintiff's request to remand this action to the courts of the State of New York.
3. A true and accurate copy of the complaint is attached hereto as Exhibit D.
4. A true and accurate copy of the removal papers is attached hereto as Exhibit E.

Dated: New York, New York
April 4, 2008

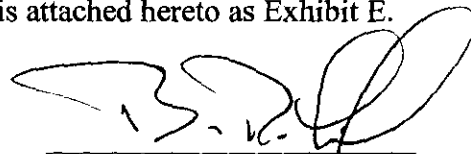

Barry R. Fischer (BF0274)

EXHIBIT D

FEB 07 2008

At the Office for the Self-Represented
of the Supreme Court of the State of
New York, held in for the County of
New York at the County Courthouse,
60 Centre Street, New York, N. Y.,
on the 4 day of February, 2008

PRESENT: HON. HON. JOHN E.H. STACKHOUSE
Justice of the Supreme Court

In the Matter of the Application of

Stanton Sterling Schultz
[fill in name(s)] Plaintiff(s)/Petitioner(s)

Index Number

Y00265/08

For permission to Prosecute as a Poor Person an Action/Proceeding
pursuant to Article 11 of the Civil Practice Law and Rules

- against -

POOR PERSON ORDER

Safra National Bank of New York /
Banco Safra S.A.
[fill in name(s)] Defendant(s)/Respondent(s)

Upon the annexed affidavit of Stanton Sterling Schultz [your name], plaintiff/petitioner
sworn to, _____, 200____, [date Affidavit in Support signed in front of a notary], the
summons/summons with notice/ verified complaint/petition and certificate of _____,
Esq., dated _____, 200____.

And it being alleged that said plaintiff/petitioner has a good cause of action or claim based
~~upon~~ **THAT** [briefly describe the nature of the lawsuit] supporting documents, proving that Safra
Banking Group, owner of Banco Safra S.A., is under investigation for criminal violations
of the Central Bank Resolution 2878. Violations include transferring funds from checking
account to separate investment account with Safra Brokerage without previous written or
electronic authorization by Plaintiff. Violations caused plaintiff's bankruptcy. Filed.
And it being alleged that he/she is unable to pay the costs, fees and expenses to prosecute
this action, and that there is no other person beneficially interested in the action thereof,

Now on motion of Stanton Sterling Schultz [your name] plaintiff/petitioner it is hereby

Ordered that, plaintiff/petitioner is permitted to prosecute this action as a poor person against
[name(s) of defendant(s)/respondent(s)] Safra National Bank of New York /
Banco Safra S.A.

and it is further

Ordered that any recovery by judgment or settlement in favor of the plaintiff/petitioner shall be
paid to the Clerk of the Court to await distribution pursuant to court order, and it is further

Ordered that the Clerk of this Court is directed to make no charge for costs or fees in
connection with the prosecution of this case, including one certified copy of the judgment.

ENTER:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Stanton Sterling Schultz

[your name(s)]

Plaintiff(s)

- against -

Safra National Bank of New York /
Banco Safra S.A.

[name(s) of party being sued]

Defendant(s)

SUMMONS

Index Number

400265/08

Date Index Number purchased

February 7, 2008

To the Person(s) Named as Defendant(s) above:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the complaint of the plaintiff(s) herein and to serve a copy of your answer on the plaintiff(s) at the address indicated below within 20 days after service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be entered against you by default for the relief demanded in the complaint.

Dated: _____, 200__

[date of summons]

NEW YORK
COUNTY CLERK'S OFFICE

FEB 07 2008

NOT COMPARED
WITH COPY FILE

Stanton Schultz

[sign your name]

Stanton Schultz

[print your name]

400 S. Race St.

Denver, CO 80209

(303) 744-1106

[your address(es), telephone number(s)]

Defendant(s)

Safra National Bank of
New York (Group)
Banco Safra S.A.

546 Fifth Ave.

New York, NY 10036

(212) 704-5500

[address(es) of defendant(s)]

Venue: Plaintiff(s) designate(s) New York County as the place of trial. The basis of this designation is: [check box that applies]

- ☐ Plaintiff(s) residence in New York County
☐ Defendant(s) residence in New York County
☐ Other [See CPLR Article 5]: _____

APS MARKETING GROUP 718-246-7800

46-3004R-100M92

COUNTY CLERK, NEW YORK COUNTYApplication for INDEX NUMBER pursuant to Section 8018,
C.P.L.R.**FEE \$210.00****INDEX NUMBER**

400265/08

Do not write in this space

Space below to be TYPED or PRINTED by applicant

TITLE OF ACTION OR PROCEEDING

Stanton Sterling Schultz

VS.

Safra National Bank of
New York / Banco Safra S.A.
Banking Group**CHECK ONE**☐COMMERCIAL
ACTION☒NOT
COMMERCIAL
ACTION☐CONSUMER
CREDIT
TRANSACTION☒NOT
CONSUMER
CREDIT
TRANSACTION☐THIRD
PARTY
ACTION☒NOT
THIRD
PARTY
ACTION**IF THIRD PARTY ACTION****MAIN INDEX NO.** _____NEW YORK
COUNTY CLERK'S OFFICE

FEB 07 2008

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Name and address of Attorney for Plaintiff or Petitioner.	Self-represented 400 South Race St. Denver, CO 80209 Phone: (303) 744-1106
Name and address of Attorney for Defendant or Respondent.	Safra National Bank of New York (Group) Banco Safra S.A. 546 Fifth Ave. New York, NY 10036 Phone: (212) 704-5500

A. Nature and object of action or Nature of special proceeding Negligence; Banking violations of criminal nature

B. Application for Index Number filed by: Plaintiff ☒ Defendant ☐

C. Was a previous Third Party Action filed Yes ☐ No ☒

Date filed _____

Index No
400265/08

Supreme Court of the State of New York,
County of New York

Stanton Sterling Schultz
Plaintiff

against

Sefra National Bank of New York
Banco Sefra S.A. (Banking Group)

Defendant

NEW YORK
COUNTY CLERK'S OFFICE

FEB 07 2008

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Complaint

To the Supreme Court of the State of New York

The Complaint of the Plaintiff, Stanton Sterling Schultz, respectfully shows and alleges as follows:

- 1.) The Plaintiff herein, Stanton Sterling Schultz, is a US Citizen with residence in State of Colorado, residing at 700 S. Race St., Denver, CO.
- 2.) The defendant, Sefra National Bank of New York, is the U.S. branch of the international banking group, Banco Sefra S.A., with address in NYC at 546 Fifth Ave., New York, NY.
- 3.) Plaintiff Stanton Schultz was banking customer at Banco Sefra branch since 1999 and actively invested

NEW YORK
COUNTY CLERK'S OFFICE

FEB 07 2008

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in Brazilian stock market through another account opened with Safra Brokerage.

- 4.) Beginning in 2002 through 2003, Safra Bank began making transactions between the two separate accounts, checking account and investment account with Safra Brokerage without proper authorization, which by Resolution of the Central Bank of Brazil Nº 2878, demands that such authorization be in writing or electronic message. Such written authorization was never given.
- 5.) Trading volatility, with the uncertainty of the beginning of the Iraq War, increased. Collusion among bank employees and Brokerage employees forced liquidation of position even though verbally authorization had been given.
- 6.) Case was brought before Brazilian court, supporting Bank of Safra's claim that there had been no verbal agreement. Assuming no verbal agreement was made to transfer funds from checking account, above and beyond limit of \$7,500, then Bank is in violation of Resolution 2878, of the Central Bank of Brazil, which prohibits such transfers without written or electronic authorization.
- 7.) Bank and Brokerage are being investigated for criminal violations to such unauthorized transfers, as well as falsifying documents and dates on contract between Plaintiff and Safra Brokerage.

FEB 07 2008

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8.) Violated transactions, non-authorized by Plaintiff, based on banking law and customer/banking consumer law were basis for dis-structuring Plaintiff's financial position, causing Plaintiff to file for bankruptcy in State of Colorado in 2003.

9.) By reason of the facts and circumstances stated above and attached documents, plaintiff has been damaged by defendant, on 21 February 2003, in the sum of \$154,600.⁰⁰ in compensatory damages.

(a.) Moral damages for caused suffering to plaintiff from defendant's intention to cause damages (from Bank and Brokerage employee collusion/negligence) estimated to be \$342,875.⁰⁰

Wherefore, plaintiff demands judgement against the defendant in the sum of compensatory and moral damages: \$497,475, plus interest from February 21, 2003, costs and disbursements, together with any other relief, including punitive/exemplary damages, the Court finds to be just and proper.

Dated: February 4, 2008

Stanton Schultz

Stanton Schultz

400 S. Race St.

Denver, CO 80209

(303) 744-1106

NEW YORK
COUNTY CLERKS OFFICE

FEB 07 2008

VERIFICATION

NOT COMPARED
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Stanton Sterling Schultz, being duly sworn, deposes and says:

I am the plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

State of New York
County of New York

Stanton Schultz
[sign your name in front of a Notary]

Stanton Sterling Schultz
[print your name]

Sworn to before me this
FEB 04 2008
____ day of _____, 200__

Margaret A. Schwartz
Notary Public

MARGARET A. SCHWARTZ
Notary Public, State of New York
Reg. No. 04SC6152068
Qualified in New York County
Commission Expires Aug. 23, 2010



Safra National Bank
of New York

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[Assets](#)

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Dependable Investment.
Solutions Through All Market Climates

You are here: [Home](#) > [Contact Us](#)

Contact Us

Branch Location

546 Fifth Avenue
New York, NY 10036
(212) 704-5500
Email address: support@safra.com

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Member FDIC. Equal housing lender.
Please read our disclaimer.

NEW YORK
COUNTY CLERK'S OFFICE

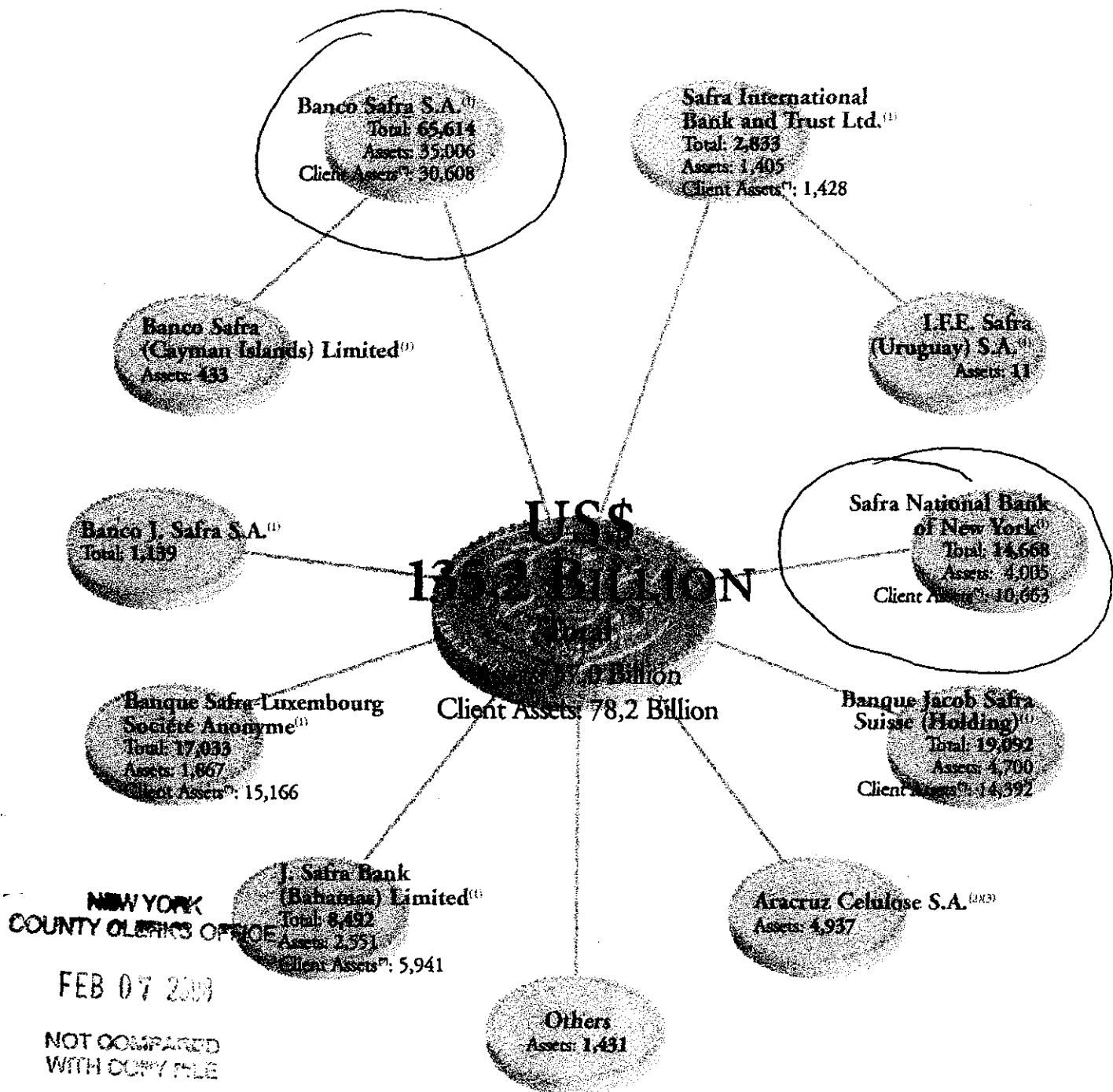
FEB 07 2008

**NOT COMPARED
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THE JOSEPH SAFRA FAMILY COMPANIES

JUNE 2007

US\$ Million



(1) Financial Companies (2) Non-financial Companies (3) Participation is shared (*) Off Balance Sheet

EXHIBIT E

Defendants.

cc: Stanton Sterling Schultz
400 S. Race St.
Denver, Colorado 80209
(303) 744-1106

JS 44C/BDNY
REV. 12/2005

CIVIL COVER SHEET

08 CV 02371

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS STANTON STERLING SCHULTZ

DEFENDANTS SAFRA NATIONAL BANK OF NEW YORK
BANCO SAFRA, S.A. MAR 07 2008

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Pro Se
400 S. Race St., Denver, CO 80209, (303) 744-1106

ATTORNEYS (IF KNOWN)

Fischer & Mandell LLP
550 Fifth Avenue, 6th Floor, New York, NY 10036, (212) 840-0200

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

Colorado resident filed suit in New York State Court against a domestic bank and a Brazilian bank for alleged improprieties occurring in Brazil. (Diversity, 28 U.S.C. 1332) (Removal, 28 U.S.C. 1441)

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes? ☐ Judge Previously AssignedIf yes, was this case Vol ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

ACTIONS UNDER STATUTES

CONTRACT		TORTS		FORFEITURE/PENALTY		BANKRUPTCY		OTHER STATUTES	
[] 110 INSURANCE	[] 310 AIRPLANE	[] 302 PERSONAL INJURY -	[] 810 AGRICULTURE	[] 422 APPEAL	[] 400 STATE				
[] 120 MARINE	[] 315 AIRPLANE PRODUCT	[] MED MALPRACTICE	[] 820 FOOD & DRUG	[] 28 USC 156	[] 410 ANTI-TRUST				
[] 130 MILLER ACT	[] LIABILITY	[] 305 PERSONAL INJURY	[] 825 DRUG RELATED	[] 423 WITHDRAWAL	[] 430 BANKS & BANKING				
[] 140 NEGOTIABLE	[] 320 ASSAULT, LIBEL &	[] PRODUCT LIABILITY	[] SEIZURE OF	[] 28 USC 157	[] 450 COMMERCE/ACC				
[] INSTRUMENT	[] 320 ASSAULT, LIBEL &	[] 305 PERSONAL INJURY	[] PROPERTY		[] 460 RATES/ETC				
[] 150 RECOVERY OF	[] 330 FEDERAL	[] 305 ASBESTOS PERSONAL	[] 830 LIQUOR LAWS	[] 480 DEPORTATION					
[] OVERPAYMENT &	[] EMPLOYERS'	[] INJURY PRODUCT	[] 840 RR & TRUCK	[] 470 RACKETEER INFLU-					
[] ENFORCEMENT OF	[] LIABILITY	[] LIABILITY	[] 850 AIRLINE REGS	[] ENCED & CORRUPT					
[] JUDGMENT	[] 340 MARINE	[] PERSONAL PROPERTY	[] 860 OCCUPATIONAL	[] ORGANIZATION ACT					
[] 151 MEDICARE ACT	[] 345 MARINE PRODUCT	[] 370 OTHER FRAUD	[] SAFETY/HEALTH	[] (RICO)					
[] 152 RECOVERY OF	[] LIABILITY	[] 371 TRUTH IN LENDING	[] 880 OTHER	[] 480 CONSUMER CREDIT					
[] DEFAULTED	[] 350 MOTOR VEHICLE	[] 371 TRUTH IN LENDING		[] 490 CABLE/SATELLITE TV					
[] STUDENT LOANS	[] 355 MOTOR VEHICLE	[] 380 OTHER PERSONAL		[] 510 SELECTIVE SERVICE					
[] (EXCL VETERANS)	[] PRODUCT LIABILITY	[] PROPERTY DAMAGE		[] 550 SECURITIES/					
[] 153 RECOVERY OF	[] 360 OTHER PERSONAL	[] PROPERTY DAMAGE		[] COMMUNITIES/					
[] OVERPAYMENT OF	[] INJURY	[] PRODUCT LIABILITY		[] EXCHANGE					
[] VETERAN'S BENEFITS				[] 575 CUSTOMER					
[] 150 STOCKHOLDERS SUITS				[] CHALLENGE					
[] 150 OTHER CONTRACT				[] 12 USC 3410					
[] 155 CONTRACT PRODUCT				[] 581 AGRICULTURE ACTS					
[] LIABILITY				[] 582 ECONOMIC					
[] 155 FRANCHISE				[] STABILIZATION ACT					
				[] 583 ENVIRONMENTAL					
				[] MATTERS					
				[] 584 ENERGY					
				[] ALLOCATION ACT					
				[] FREEDOM OF					
				[] INFORMATION ACT					
				[] 590 APPEAL OF FEE					
				[] DETERMINATION					
				[] UNDER EQUAL ACCESS					
				[] TO JUSTICE					
				[] 590 CONSTITUTIONALITY					
				[] OF STATE STATUTES					
				[] 590 OTHER STATUTORY					
				[] ACTIONS					

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?
IF SO, STATE:

DEMAND \$ _____ OTHER _____

JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint

JURY DEMAND: ☐ YES ☒ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN X IN ONE BOX ONLY)

ORIGIN

- ☐ 1 Original Proceeding
 ☐ 2a. Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

(PLACE AN X IN ONE BOX ONLY)

BASIS OF JURISDICTION

IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1332, 1441)

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☒ 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [] []	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [] [X]	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [] []
CITIZEN OF ANOTHER STATE	[X] []	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] [X]	FOREIGN NATION	[] []

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

400 S. Race St.
Denver, CO 80209

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Safra National Bank of New York
546 Fifth Avenue
New York, New York 10036

Banco Safra, S.A.
Av. Paulista, 2100
Sao Paulo, Brazil 01310-930

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ FOLEY SQUARE
(DO NOT check either box if this is a PRISONER PETITION.)

DATE 3/6/08 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO
[x] YES (DATE ADMITTED Mo. 09 Yr. 1983)
Attorney Bar Code # BF0274

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

J Michael McMahon, Clerk of Court by MAAS Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

Barry R. Fischer (BF0274)
FISCHER & MANDELL LLP
550 Fifth Avenue, 6th Floor
New York, New York 10036
(212) 840-9300

08 CV 02371

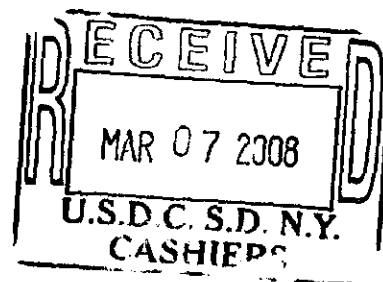
Attorneys for Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

STANTON STERLING SCHULTZ

Plaintiff,



Civil Action No.

-against-

SAFRA NATIONAL BANK OF NEW YORK, and
BANCO SAFRA, S.A.

Defendants.

X

NOTICE OF REMOVAL

Defendants, Safra National Bank of New York ("Safra New York") and Banco Safra, S.A. ("Banco, S.A."), by their undersigned counsel, hereby give notice of removal of this action from the Supreme Court of the State of New York, County of New York, where it is now pending, Index No. 400265/08, to the United States District Court for the Southern District of New York, pursuant to 28 U.S.C. §§1441 et seq. In support of this removal, defendants aver as follows:

1. Plaintiff, Stanton Sterling Schultz ("Schultz"), *pro se*, commenced this action against defendants by Summons and Complaint in the Supreme Court of the State

of New York, County of New York, on February 7, 2008. True and correct copies of the Summons and Complaint with plaintiff's attachments are attached hereto as Exhibit A.

2. Defendants were served via Regular Mail and received plaintiff's Summons and Complaint on February 11, 2008.

3. A United States District Court has original jurisdiction over a case where the parties' citizenship is diverse and the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. §1332(a).

4. According to plaintiff's Complaint, plaintiff is a citizen solely of the State of Colorado, residing at 400 S. Race St., Denver, CO 80209. See Exhibit A.

5. According to plaintiff's Complaint, plaintiff is seeking damages of \$497,475 for alleged breach of contract, negligence and Brazilian criminal banking violations. See Exhibit A.

6. Defendant Safra New York is a national banking corporation formed under the laws of the United States, with a principal place of business in New York and with branches in Florida.

7. Defendant Banco, S.A. is a corporation formed under the laws of Brazil, with a principal place of business in Sao Paulo, Brazil.

8. This action is subject to removal because complete diversity of citizenship exists and the amount in controversy exceeds \$75,000.

9. Pursuant to 28 U.S.C. 1332(a), the United States District Courts have original jurisdiction over this action, pursuant to 28 U.S.C. §1332(a), and this action is, therefore, removable to this Court pursuant to 28 U.S.C. 1441.

10. Pursuant to 28 U.S.C. §1446(b), this Notice is filed within thirty (30) days after service of the Summons and Complaint upon defendants.

11. Pursuant to 28 U.S.C. §1446(d), a copy of this Notice of Removal is being filed with the Supreme Court of the State of New York, County of New York and is being served on all adverse parties.

WHEREFORE, defendants hereby remove this action now pending against them in the Supreme Court of the State of New York, County of New York.

Dated: New York, New York
March 6, 2008

Respectfully,

FISCHER & MANDELL LLP
550 Fifth Avenue, 6th Floor
New York, New York 10036
(212) 840-9300

By 

Barry R. Fischer (BF0274)

Attorneys for Defendants

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STANTON STERLING SCHULTZ

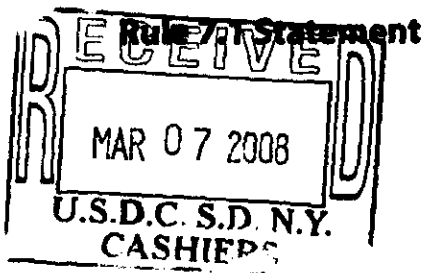
Plaintiff,

08 CV 02371

-v-

SAFRA NATIONAL BANK OF NEW
YORK and BANCO SAFRA, S.A.

Defendant.



Pursuant to Federal Rule of Civil Procedure 7.1 [formerly Local General Rule 1.9] and to enable District Judges and Magistrate Judges of the Court to evaluate possible disqualification or recusal, the undersigned counsel for Safra National Bank of New York and Banco Safra, S.A. (a private non-governmental party)

certifies that the following are corporate parents, affiliates and/or subsidiaries of said party, which are publicly held.

Safra National Bank of New York has no publicly held parents, affiliates and/or subsidiaries

Banco Safra, S.A. has no publicly held parents, affiliates and/or subsidiaries

Date:

3/6/08

A handwritten signature in black ink, appearing to be "R. D. L.", written over a horizontal line.

Signature of Attorney

Attorney Bar Code: BF0274

EXHIBIT F

FISCHER & MANDELL LLP

ATTORNEYS AND COUNSELORS AT LAW

550 FIFTH AVENUE - 6TH FLOOR
NEW YORK, NEW YORK 10036-5007
TEL.: (212) 840-9300
FAX.: (212) 840-9323
www.fmlaw-us.com

BARRY R. FISCHER
ADMITTED IN NEW YORK AND FLORIDA
BFISCHER@FMLAW-US.COM

March 10, 2008

By Hand
Hon. Richard M. Berman
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

**Re: Stanton Sterling Schultz v. Safra National Bank of New York
and Banco Safra, S.A. - 08 cv 02371 (RMB)**

Dear Judge Berman:

This firm represents the defendants, Safra National Bank of New York ("SNB") and Banco Safra, S.A. in the above entitled matter. We write pursuant to Rule 2A of this Court's Individual Practices to request a pre-motion conference. Specifically, SNB and Banco Safra, S.A. seek this Court's permission to make a motion to dismiss plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(6) and Fed. R. Civ. P. 12(b)(2). Construing the complaint in the light most favorable to plaintiff, we believe it is clear plaintiff has not stated a cause of action against SNB upon which relief can be granted. Plaintiff has also failed to affect proper service on and/or obtain jurisdiction over Banco Safra, S.A. since he simply mailed the summons and complaint to SNB, an unrelated entity, at its New York headquarters.

FISCHER & MANDELL LLP

ATTORNEYS AND COUNSELORS AT LAW

The plaintiff commenced this action *pro se* in New York State Supreme Court, New York County and served a summons and complaint via regular mail upon SNB on February 11, 2008. The defendants removed this action based on diversity of citizenship to the United States District Court, Southern District of New York on March 7, 2008.

Plaintiff is mistaken for several reasons in the belief that he can sustain an action against Banco Safra, S.A., a Brazilian bank, in the U.S. by serving his complaint on SNB, an unrelated entity, in New York: (i) there is no allegation against SNB in the complaint, thus it fails to state a cause of action against SNB; (ii) SNB is legally unrelated to Banco Safra, S.A., thus plaintiff's service of the summons and complaint on SNB is not consistent with the Inter-American Convention on Letters Rogatory; as a result, (iii) plaintiff has failed to obtain jurisdiction over Banco Safra, S.A.

The complaint never mentions that plaintiff was ever a customer of SNB or ever had any relationship or even communications with SNB. His sole allegation that SNB is the "U.S. branch" of Banco Safra, S.A. is simply untrue, as documentary evidence, both from SNB and independent government agencies will attest. The plaintiff has clearly brought suit against the wrong party. Since the plaintiff fails to state even one allegation against SNB, it must be dismissed for failure to state a cause of action.

With regard to Banco Safra, S.A., valid service of process is an indispensable prerequisite to the claim of personal jurisdiction over a defendant. *Ferrostaal, Inc. v. HACI HASSAN YARDIM*, No. 03 Civ. 4886, 2006 WL 2819585 (S.D.N.Y. 2006). Since SNB cannot accept service for Banco Safra, S.A., the plaintiff was required to serve Banco Safra, S.A. in Brazil, pursuant to the Inter-American Convention on Letters Rogatory ("Convention"), to which the

FISCHER & MANDELL LLP

ATTORNEYS AND COUNSELORS AT LAW

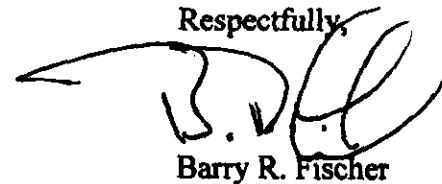
U.S. and Brazil are signatories. *Kreimerman v. Casa Veerkamp, S.A. de C.V.*, 22 F.3d 634 (5th Cir. 1994); *Value Partners S.A. v. Bain & Co., Inc.*, 1998 WL 336648 (S.D.N.Y. 1998).

Brazilian law requires that service of process from foreign nations be made pursuant to a letter rogatory or letter of request transmitted through diplomatic channels. *Matter of Commodity Futures Trading Commn. v. Nahas.*, 738 F.2d 487, 494 (D.C.Cir.1984).

The plaintiff has not claimed service on Banco Safra, S.A. through the U.S. State Department (pursuant to the Convention) or through any other means that would satisfy Brazilian law. New York courts cannot condone service of process that violates Brazilian law. *Morgenthau v. Avion Resources Ltd.*, 849 N.Y.S.2d 223 (1st Dep't 2007).

Accordingly, we seek this Court's permission to make a motion to dismiss plaintiff's complaint.

Respectfully,



Barry R. Fischer

cc: Stanton Sterling Schultz (by regular mail)
encl: Copy of removal papers/pleadings